

MINUTES OF THE EDDY COUNTY WATER RESOURCE BOARD  
August 1, 2023

A regular meeting of the Eddy County Water Resource Board was held on August 1, 2023 at 9:00 AM at the Eddy County Courthouse. Board members Monty Schaefer, Mike Tweed, Kenneth Reis and Secretary/Treasurer, Travis S. Peterson, were present in the basement of the Eddy County Courthouse. Eddy County Landowner, Nate Collier, was also present.

The minutes of the regular July 11, 2023, meeting were presented. Schaefer made a motion to approve. Second by Tweed. Motion carried.

The Treasurer's Report was presented and reviewed. Reis made a motion to approve the Treasurer's report. Tweed seconded the motion. Motion carried.

Bill presented for payment:

AE2S – June 17, 2023 to July 14, 2023 (one-third of \$4,509.50) = \$1,503.17  
Nelson County/Johnson Lake Cleanout (3rd and final installment) = \$2,000.00

Schaefer made a motion to pay both bills. Reis seconded the motion. Motion carried.

**Correspondence:** Various correspondence was reviewed. Except as otherwise noted in these minutes no action required.

**Old Business:**

**New Rockford Canal/Garrison Diversion Conservancy District:** Peterson reported that he has not heard from AE2S since the July 11, 2023 meeting.

**Garrison Diversion Conservancy District:** Tweed reported that the board met in Dickinson in conjunction with the Summer Convention and Expo. Contractors working on the Red River Valley Water Supply Pipeline are experiencing a very high water table that is impeding progress. The contractor is working to come up with solutions.

**Summer Convention and Expo:** Tweed summarized his attendance at the meetings held in Dickinson on July 18-20th. Indications are that the winter convention will be December 5-8, 2023 in Bismarck.

**Devils Lake Basin Joint Water Resource Board:** Tweed summarized the business conducted at the July 12, 2023 meeting. It was a generally quiet meeting. DLBJWR has not heard back from Benson County and whether or not they will rejoin the joint board.

**Upper Sheyenne Joint Water Resource Board:** Schaefer indicated there is nothing new to report; and the next meeting is scheduled for mid-August.

**Rosefield Township/Culverts:** Schaefer reported that he had a follow-up conversation with Larry Skiftun of the Wells County Water Board. Based on that discussion, it is Schaefer's understanding that 60% of the 61st Avenue culvert(s) replacement and installation will be paid by the Oak Creek Assessment Drain; and 40% will be paid by Rosefield Township. Oak Creek Assessment Drain will

use the culvert Rosefield Township purchased; and will coordinate the remainder of the project with David Rue.

Indication is that the 64th Avenue (“Kulsrud road”) culverts were not installed as part of the Oak Creek/Rocky Run project and therefore replacement and installation of these culverts will not be paid by the Oak Creek Assessment Drain. There was discussion about what costs are and are not payable according to the joint Rocky Run agreement. The joint powers agreement between Wells, Eddy and Foster Counties for Rocky Run flood control works was reviewed. If the 64th Avenue culverts were not installed as part of the Oak Creek/Rocky Run project, then it is unlikely that replacement and installation of these culverts will be paid by the joint board. Reis recalls that, generally, the cost of replacing culverts in township roads has been paid as follows: 50% of the cost of the culvert paid by the County; 50% of the cost of the culvert paid by the township; and 100% of the installation cost paid by the township.

**New Business:**

**Nate Collier/Wade Wippering/Columbia Township:** Nate Collier was present to discuss a ditch cleanout project in Sections 8, 9 and 16, Township 148, Range 64 (Columbia Township), Eddy County, North Dakota. The total length of channel to be cleaned is approximately two miles of which 1.5 miles is on Collier ground and .5 miles is on Wade Wippering ground. Collier proposes to clean sediment from the channel that crosses the S1/2 of Section 8 (owned by Collier); the SW1/4 of Section 9 (owned by Wippering); and the N1/2 of Section 16 (owned by Collier). Collier indicated that he and/or Danny Ludwig will do the work with Collier’s equipment. Collier estimated that the project costs will be \$5,000 (25 hours at \$200/hour), but will keep track of time. During the meeting Collier completed and signed a request for cost share application. A second request for cost share application was provided to Collier for Wade Wippering to complete and sign. Schaefer moved to approve an 80%/20% cost share on this project, contingent on receiving Wade Wippering’s completed and signed application. Second by Reis. Motion carried.

**Application to Install a Subsurface Water Management System #2023-003 for Justin Topp in the NE1/4, SE1/4 and NW1/4 of Section 15, Township 148 North, Range 64 West (Columbia Township) Eddy County, ND.**

The Board reviewed the Application to Install a Subsurface Water Management System No. 2023-003 filed on July 14, 2023, by Applicant, Justin Topp. Under the application, Applicant seeks to install a 120 acre drain tile system in the NE1/4, SE1/4 and NW1/4 of Section 15, Township 148, Range 64, Columbia Township, Eddy County, North Dakota. The project will include one 8” pump outlet having a capacity of 1,000 gallons per minute located near the east boundary of the SE1/4 of Section 15, Township 148, Range 64. Water will be pumped directly into a road ditch and flow south along the east edge of the SE1/4 of Section 15 until it reaches a natural watercourse. The project drainage coefficient of the system is a 3/8th inch.

According to the county tax roll information supplied by Applicant, Topp Family Farms, LLLP, owns the NE1/4 and SE1/4; and Topp Land and Cattle, LLC owns the NW1/4 (less Auditor’s Lot 3) of Section 15, Township 148, Range 64, (Columbia Township), Eddy County, North Dakota.

Tweed moved, and Schaefer seconded the motion, to approve Application to Install a Subsurface Water Management System No. 2023-003 filed July 14, 2023 regarding the proposed tile system for Justin

Topp in the NE1/4, SE1/4 and NW1/4 of Section 15, Township 148 North, Range 64 West, Columbia Township, Eddy County, North Dakota, subject to the following conditions:

1. That Applicant install and maintain erosion protection at any and all outlets;
2. That Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
3. That Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines that may exist within the project area under any blanket easements, or otherwise beyond any existing water line easements;
4. That Applicant will install and operate control structures at any and all outlets, including the requirement that the control structures be closed or pump outlets be turned off during critical flood periods;
5. That Applicant must apply for an amendment to Subsurface Water Management Permit No. 2023-003 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system; and
6. That Applicant remove silt and vegetation or repair erosion and scour damages directly caused by the tile system, up to one mile downstream from any and all outlets.
  - a. Downstream damage repair does not include deepening or widening a road ditch or existing drain.
  - b. The timing and method of silt and vegetation removal or damage repair in a county or township road ditch must be pre-approved by the appropriate road authorities.
  - c. Applicant shall follow any construction site protection requirements of the road authority.
  - d. If a downstream landowner or road authority presents substantial evidence that Applicant's tile system directly caused accumulation of silt, vegetation, erosion or scouring, Applicant shall remove the silt and vegetation or repair the erosion and scour damages directly caused by the tile system. However, Applicant may not spread silt, vegetation or debris along adjoining land without the permission of all parties having a legal interest in the land.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District recommends that Applicant consider complying with the following:

- 1) that Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.

Upon vote, the above motion was carried unanimously. Travis Peterson will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit 2023-003, and Applicant's Downstream Flow Map to the Department of Water Resources, Columbia Township in Eddy County, Topp Family Farm, LLLP, and Topp Land and Cattle, LLC. Under the current tile law, Applicant's detailed project design map is an exempt record, and the water board will not provide copies to any third parties.

**Application to Install a Subsurface Water Management System #2023-004 for Justin Topp in the SE1/4 of Section 23 and SW1/4 of Section 24, Township 148 North, Range 63 West (Cherry Lake) Eddy County, ND.**

The Board reviewed the Application to Install a Subsurface Water Management System No. 2023-004 filed on July 14, 2023, by Applicant, Justin Topp. Under the application, Applicant seeks to install a 125 acre drain tile system in the SE1/4 of Section 23 and SW1/4 of Section 24, Township 148, Range 63, Cherry Lake Township, Eddy County, North Dakota. The project will include one 8" pump outlet having a capacity of 1,000 gallons per minute located in the southeast corner of the SE1/4 of Section 23, Township 148, Range 63. Water will be pumped directly into a road ditch and flow east through a culvert under County Road 8 until it reaches a culvert under County Road 3 where the water will flow south into a natural watercourse. The project drainage coefficient of the system is a 3/8th inch.

According to the county tax roll information supplied by Applicant, Jason E. Topp owns the SE1/4 of Section 23, Township 148 North, Range 63 West (Cherry Lake Township), Eddy County, North Dakota; Topp Family Farms, LLLP, owns the SW1/4 of Section 24, Township 148 North, Range 63 West (Cherry Lake Township), Eddy County, North Dakota; Arlyn D. Hoyt, remainder interest therein, and Gladys Hoyt, a life estate interest therein, own the NW1/4 of Section 25, Township 148 North, Range 63 West, (Cherry Lake Township), Eddy County, North Dakota.

Schaefer moved, and Tweed seconded the motion, to approve Application to Install a Subsurface Water Management System No. 2023-004 filed July 14, 2023 regarding the proposed tile system for Justin Topp in the SE1/4 of Section 23 and SW1/4 of Section 24, Township 148 North, Range 63 West, Cherry Lake Township, Eddy County, North Dakota, subject to the following conditions:

1. That Applicant install and maintain erosion protection at any and all outlets;
2. That Applicant re-establish any areas disturbed installing or maintaining Applicant's tile system;
3. That Applicant will not install Applicant's tile system within 20 feet, on either side, of any rural water lines that may exist within the project area under any blanket easements, or otherwise beyond any existing water line easements;
4. That Applicant will install and operate control structures at any and all outlets, including the requirement that the control structures be closed or pump outlets be turned off during critical flood periods;
5. That Applicant must apply for an amendment to Subsurface Water Management Permit No. 2023-004 in advance of any proposed alterations to outlet locations, the addition of any outlets, or improvements or modifications to the tile system that could increase the capacity or drainage area of the tile system; and
6. That Applicant remove silt and vegetation or repair erosion and scour damages directly caused by the tile system, up to one mile downstream from any and all outlets.
  - a. Downstream damage repair does not include deepening or widening a road ditch or existing drain.
  - b. The timing and method of silt and vegetation removal or damage repair in a county or township road ditch must be pre-approved by the appropriate road authorities.
  - c. Applicant shall follow any construction site protection requirements of the road authority.

- d. If a downstream landowner or road authority presents substantial evidence that Applicant's tile system directly caused accumulation of silt, vegetation, erosion or scouring, Applicant shall remove the silt and vegetation or repair the erosion and scour damages directly caused by the tile system. However, Applicant may not spread silt, vegetation or debris along adjoining land without the permission of all parties having a legal interest in the land.

Under Section 61-32-03.1, the District cannot attach any additional conditions to Applicant's permit. However, for Applicant's protection, and to ensure protection of Applicant's tile system, the District recommends that Applicant consider complying with the following:

- 1) that Applicant obtain all other necessary and requisite licenses, permits, registrations, and/or approvals from all applicable federal, state, county, and municipal governments, and any other applicable governmental entities.


Upon vote, the above motion was carried unanimously. Travis Peterson will provide copies of the Board's Notice of Decision, Subsurface Water Management Permit 2023-004, and Applicant's Downstream Flow Map to the Department of Water Resources, Cherry Lake Township in Eddy County, Jason E. Topp, Topp Family Farm, LLLP, Arlyn D. Hoyt, and Gladys Hoyt. Under the current tile law, Applicant's detailed project design map is an exempt record, and the water board will not provide copies to any third parties.

**Next Meeting:** The next regular meeting is scheduled for September 5, 2023, at 9 AM in the Eddy County Courthouse.

There being no further business the meeting was adjourned at 10:55 AM.

APPROVED:

Respectfully submitted,

  
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Travis S. Peterson, Recording Secretary

  
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Kenneth Reis, Chairman